

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

PETER FISCHER, *on behalf of himself*
and all others similarly situated,

Plaintiff,

vs.

VITAL PHARMACEUTICALS, INC.,
d/b/a VPX Sports, *et al.*,

Defendants.

Case No. 4:22-cv-00136-MTS

MEMORANDUM AND ORDER

Defendant Vital Pharmaceuticals, Inc. has filed a Suggestion of Bankruptcy, Doc. [37], stating that on October 10, 2022, it filed for voluntary Chapter 11 bankruptcy in the United States Bankruptcy Court for the Southern District of Florida. *See In re Vital Pharmaceuticals, Inc.*, 0:22-bk-17842-PDR (Bankr. S.D. Fla.). The filing of a bankruptcy petition operates as an automatic stay of the commencement or continuation of judicial proceedings against the debtor commenced before the filing of the petition. *See* 11 U.S.C. § 362(a)(1). Since the stay operates only as to the continuation of an action or proceedings *against the debtor*, actions with multiple parties may not necessarily need stayed in their entirety; that is, an action may be able to proceed against defendants not subject to the stay. *See, e.g., E%r3%rBiofuels Mead, LLC v. QA3 Fin. Corp.*, 384 B.R. 580, 581 (D. Kan. 2008); *Bartech Sys. Int'l, Inc. v. Mobile Simple Sols., Inc.*, 2:15-cv-02422-NJK, 2018 WL 679905, at *1 (D. Nev. Jan. 4, 2018).


Here, Plaintiff named as Defendants “DOES 1 through 10.” No later than **Thursday, October 27, 2022**, Plaintiff shall file a memorandum with the Court if he maintains that the fictitious Defendants are not subject to the stay and he therefore seeks to proceed against the fictitious named Defendants in this action. If Plaintiff does seek to proceed, the memorandum shall provide a thorough explanation, supported by relevant authority, why the case can proceed against these fictitious Defendants. Also, if Plaintiff seeks to proceed, he must be prepared to serve these fictitious Defendants promptly. *See* Fed. R. Civ. P. 4(m); *see also Trustees of United Plant & Prod. Workers Loc. 175 Benefits Fund v. Carlo Lizza & Sons Paving, Inc.*,

No. 2:16-cv-5521-GRB, 2019 WL 5699992, at *1 n.1 (E.D.N.Y. Aug. 29, 2019). If Plaintiff does not file a memorandum, the Court will stay the case in its entirety.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff shall file a memorandum with the Court, consistent with this Order and no later than **Thursday, October 27, 2022**, if he seeks to proceed with the litigation of this action as to the fictitious Defendants, despite the bankruptcy filing of Defendant Vital Pharmaceuticals, Inc.

Dated this 19th day of October, 2022.

A handwritten signature in black ink, appearing to read 'Matthew T. Schelp', is written over a horizontal line.

MATTHEW T. SCHELP
UNITED STATES DISTRICT JUDGE